FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Second Appeal No. 461/2004
(*Smt.Mahadevi wd/o Dwarkadas Agrawal & another* **VERSUS** *Smt.Gitabai Mohanlal Agrawal***)**

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

CORAM : Smt. Vasanti A. Naik, J.
DATE : 16th July, 2007.

Heard the learned counsel for the parties.

The appellant is the original defendant. A suit was filed by the plaintiff for permanent injunction restraining the defendant from making construction touching to the western side wall of the house of the plaintiff in the Government lane of 5 feet and obstructing thereby light and air and free user.

The defendant filed the written statement and denied the claim of the plaintiff. It was denied that there was drainage touching to the western side wall of the house of the plaintiff and the waste water used to flow through this drainage. It was further denied that there were three windows on the first floor on the western side and that the windows of the plaintiff's house were being closed in view of the construction which was made by the defendant on the western side of the plaintiff's house. It was also pleaded that the plaintiff resided at Paratwada,

and therefore, he could not have filed the suit for the reliefs sought in the plaint.

The trial Court framed the necessary issues and held that the plaintiff proved that the defendants started making the construction on government lane by force. The Court further held that the construction made by the defendants obstructed the plaintiffs windows, thereby further obstructing the entry of light and air inside the house of the plaintiff. The Court then held that material injury was caused to the plaintiff in the facts and circumstances of the case. The trial Court, therefore, directed the defendant to remove the projected balcony and the construction made over the drainage on the western side wall of the plaintiff's house.

An appeal filed by the defendant against judgment and decree passed by the trial Court was also dismissed.

The findings recorded by both the Courts are based on the proper appreciation of the material evidence on record. The substantial questions of law stated in the memorandum of appeal do not arise for consideration in the present second appeal.

Since no substantial question of law arise for

consideration in this second appeal, the same is dismissed with no order as to costs.

JUDGE

APTE